

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
BRYSON CITY DIVISION
2:12 CR 05**

UNITED STATES OF AMERICA)	
)	
Vs.)	ORDER
)	
RICHARD DANIEL BIRD.)	
_____)	

THIS MATTER has come before the undersigned, pursuant to a motion filed by Fredily Sison, former counsel for defendant entitled “Motion to Suppress and Request for Evidentiary Hearing" (#10). LCrR 47.1(C) required that briefs be filed contemporaneously with any potentially dispositive pretrial motion submitted in a criminal action. The Rule states as follows:

(C) Requirement of Briefs. Briefs shall be filed contemporaneously with any potentially dispositive pretrial or post-trial motion submitted in a criminal action. No brief is required in support of timely motions for extension of time, continuances, admissions *pro hac vice*, etc.

Defendant’s counsel did not file a supporting brief in this matter as required by the Local Rule. An examination of the motion shows it was counsel’s intent to incorporate a legal argument in her motion.

LCrR 47.1(D) requires the government to file a response. The Rule states:

(D) Response Required by the Government. Unless otherwise directed by the Court, the government shall respond to all potentially

dispositive defense motions filed in a criminal case. Examples of such motions include motions to suppress and motions to dismiss the indictment.

LCrR 47.1(E) requires that responses to motions be filed within seven (7) days of the date on which the motion is served.

The motion of defendant's counsel to suppress and request for a hearing was filed on March 19, 2012. The government's response was due on March 26, 2012 and the government did not file a response. The failure to file a response, in all likelihood however, was due to the fact that defendant's counsel did not file a brief. Due to the failure of defendant to comply with LCrR 47.1(C) and the government's failure to comply with LCcR 47.1(D) the motion of defendant will be denied without prejudice and defendant will be allowed to refile a motion along with supporting brief as required by the Local Rules of Criminal Procedure. Said filing shall take place on or before April 16, 2012. The government will then be allowed to respond as required by the same Local Rules.

ORDER

IT IS, THEREFORE, ORDERED that the defendant's "Motion to Suppress and Request for Evidentiary Hearing" (#10) is **DENIED** without prejudice. Defendant will be allowed to file a new motion to suppress along with a brief or supporting memorandum of law on or before **April 16, 2012**. The government will

be required to respond to such filing pursuant to the Local Rules of Criminal Procedure.

Signed: April 3, 2012

Dennis L. Howell

Dennis L. Howell
United States Magistrate Judge

